

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CC.MEXICANO US, LLC,

Plaintiff(s),

v.

AERO II AVIATION, INC., et al.,

Defendant(s).

Case No. 2:14-CV-108 JCM (NJK)

ORDER

Presently before the court is plaintiff CC.Mexicano.US, LLC's ("plaintiff") motion for award of attorney's fees against defendant Stephen Crittenden. (ECF No. 198). Defendant has not filed a response and the period to do so has since passed.

I. Background

Plaintiff filed a complaint against defendants Aero II Aviation, Inc., George Blood, and Stephen Crittenden. (ECF No. 1). In the instant motion, plaintiff moves for an award of attorney's fees against defendant Crittenden.

The basis of all claims in plaintiff's complaint is a breach of contract for failure to pay back money loaned by plaintiff to Aero II Aviation, Inc., a defendant not presently before the court. (ECF No. 1).

Plaintiff and defendants Aero II Aviation, Inc. and George Blood reached a settlement, wherein the parties agreed to pay their own attorney's fees. (ECF No. 188). Defendant Crittenden did not participate in the settlement. (ECF No. 189).

Magistrate Judge Koppe issued an order to show cause as to why default judgment should not be entered against defendant Crittenden for failure to appear at the settlement conference. (ECF No. 189). Defendant Crittenden's failure to respond to the order to show cause or seek an extension of the deadline resulted in the court affirming Magistrate Judge Koppe's report and recommendation that default judgment be entered against defendant Crittenden. (ECF No. 194).

1 Default judgment was entered against defendant Crittenden on July 15, 2016. (ECF No. 197).

2 Plaintiff now moves for an award of attorney's fees against defendant Crittenden based on
3 the default judgment. (ECF No. 198).

4 **II. Legal Standard**

5 Federal Rule of Civil Procedure 54(d) governs requests for attorney's fees and costs. Fed.
6 R. Civ. P. 54(d). Rule 54(d)(1) states that the prevailing party is entitled to costs other than
7 attorney's fees unless a federal statute, the federal rules, or a court order provides otherwise. Fed.
8 R. Civ. P. 54(d)(1).

9 Rule 54(d)(2)(B)(ii) provides that a motion for attorney's fees must "specify the judgment
10 and the statute, rule, or other grounds entitling the movant to the award." Fed. R. Civ. P.
11 54(d)(2)(B)(ii). "Rule 54(d)(2) creates a procedure but not a right to recover attorney's fees . . .
12 [T]here must be another source of authority for such an award." *MRO Commc'ns, Inc. v. Am. Tel.*
13 *& Tel. Co.*, 197 F.3d 1276, 1280–81 (9th Cir. 1999) (citation omitted). This comports with the
14 "'American Rule' that each party must bear its own attorney's fees in the absence of a rule, statute
15 or contract authorizing such an award." *Id.* at 1281 (citations omitted).

16 In diversity cases, state law controls on questions of attorney's fees. *Bevard v. Farmers*
17 *Ins. Exch.*, 127 F.3d 1147, 1148 (9th Cir. 1997). Nevada Revised Statute Section 18.010(2)(b)
18 provides that in addition to any specific statutory provision allowing attorney's fees, a court may
19 award attorney's fees "when the court finds that the claim . . . was brought or maintained without
20 reasonable ground or to harass the prevailing party." Nev. Rev. Stat. § 18.010(2)(b). Under
21 Nevada law, a claim is groundless if "the allegations in the complaint . . . are not supported by any
22 credible evidence at trial." *Allianz Ins. Co. v. Gagnon*, 860 P.2d 720, 724 (Nev. 1993) (citation
23 omitted).

24 Local Rule 54-16 provides additional requirements for motions for attorney's fees. LR 54-
25 16(b). In particular, Local Rule 54-16 requires that the moving party include a "reasonable
26 itemization and description of the work performed," an "itemization of all costs sought to be
27 charged as part of the fee award and not otherwise taxable," and a brief summary of the result,
28 labor required, novelty, difficulty, requisite skill, and nature of the fee involved in the case. LR

1 54-16(b)(1)–(3).

2 **III. Discussion**

3 **A. Timeliness of the Motion**

4 Under Federal Rule of Civil Procedure 54, “unless a statute or court order provides
5 otherwise, the motion must: (i) be filed no later than 14 days after the entry of judgment.” Fed. R.
6 Civ. P. 54(d)(2)(B)(i). Federal Rule of Civil Procedure 6 provides that when the period of time is
7 stated in days, the proper way to count is to exclude the triggering day, count every day including
8 weekends and holidays, and include the last day of the period, but if the last day is a weekend or
9 holiday, the period continues to run until the end of the next day that is not a weekend or holiday.
10 Fed. R. Civ. P. 6(a)(1)(A–C).

11 Here, default judgment was entered against defendant Crittenden on July 15, 2016. (ECF
12 No. 197). Pursuant to Rule 6, plaintiff had until July 29, 2016, to file a motion for attorney’s fees.
13 Plaintiff could have filed its motion on July 29, 2016, because it was a Friday and not a weekend
14 or holiday that would have triggered the exception under Rule 6. However, plaintiff’s motion was
15 filed on Monday, August 1, 2016. (ECF No. 198). Thus, plaintiff’s motion is untimely.

16 Accordingly, plaintiff’s motion for award of attorney’s fees will be denied as untimely.

17 **B. Lack of Opposition**

18 Local Rule 54-14(e) states that “[i]f no opposition is filed, the court may grant the motion
19 after independent review of the record.” LR 54-14(e). Here, defendant Crittenden failed to file an
20 opposition.

21 However, it is irrelevant whether an opposition was filed because, as previously stated, the
22 motion is untimely. Nonetheless, an independent review of the record on the merits reveals that
23 the motion should be denied, as discussed below.

24 **C. Basis for Attorney’s Fees under Nevada Law**

25 Even assuming, *arguendo*, that the motion was timely, plaintiff fails to assert a basis under
26 Nevada law to support a granting of attorney’s fees.

27 Under Nevada law, attorney’s fees are available only when “authorized by rule, statute, or
28 contract.” *Flamingo Realty, Inc. v. Midwest Dev., Inc.*, 879 P.2d 69, 73 (1994). The district court
has the sound discretion to decide whether to award attorney’s fees. *Id.*

Plaintiff asserts that the three promissory notes attached to its motion authorize the payment

1 of attorney's fees by contract. (ECF No. 198).

2 Plaintiff cites to the first promissory note to illustrate that defendant agreed to pay
3 plaintiff's attorney's fees. (ECF No. 198-1). While the promissory note does state that in the event
4 of default, the borrower is responsible for paying the lender's attorney's fees, it does not create a
5 contractual basis for plaintiff's current request of attorney's fees from defendant Crittenden. (ECF
6 No. 198-1). The named borrower is defendant Aero II Aviation, Inc. (ECF No. 198-1). The
7 promissory note does not mention defendant Crittenden. (ECF No. 198-1).

8 Accordingly, the first promissory note does not create a contractual basis for defendant
9 Crittenden to pay plaintiff's attorney's fees.

10 Next, plaintiff cites to the second promissory note to illustrate that defendant Crittenden
11 agreed to pay plaintiff's attorney's fees. (ECF No. 198-2). As with first promissory note, the
12 second promissory note contains a provision that in the event of default, the borrower is responsible
13 for paying the lender's attorney's fees. (ECF No. 198-2). Once again, the named borrower is
14 defendant Aero II Aviation, Inc., not defendant Crittenden. (ECF No. 198-2).

15 The second promissory note mentions defendant Crittenden, (ECF No. 198-2), but not in
16 such a way as to create a contractual basis for him to pay plaintiff's attorney's fees. Defendant
17 Crittenden is documented as providing collateral to secure the promissory note in the form of an
18 FAA bill of sale given to plaintiff on behalf of the borrower, defendant Aero II Aviation, Inc.
19 (ECF No. 198-2). Defendant Aero II Aviation, Inc. remains the borrower liable for the promissory
20 note, (ECF No. 198-2), not defendant Crittenden, who is an officer of a separate company. (ECF
21 No. 1).

22 Finally, plaintiff asserts that the third promissory note creates a contractual basis for
23 defendant Crittenden's responsibility for plaintiff's attorney's fees. (ECF No. 198-3). As with the
24 first and second promissory notes, the third promissory note contains a provision that in the event
25 of default borrower will be responsible for lender's attorney's fees. Similarly, defendant Aero II
26 Aviation, Inc., is the named borrower. (ECF No. 198-3).

27 The third promissory note mentions defendant Crittenden only to assert that the FAA bill
28 of sale Crittenden provided as collateral was going to be returned to the borrower, Aero II Aviation,
Inc., in exchange for the bill of sale for another aircraft as collateral. Thus, this promissory note
removes defendant Crittenden from involvement in the loan between plaintiff and Aero II

1 Aviation, Inc.

2 Accordingly, the third promissory note does not create a contractual basis for defendant
3 Crittenden to pay plaintiff's attorney's fees.

4 Therefore, as pleaded by plaintiff, there is no contractual basis for defendant Crittenden to
5 pay plaintiff's attorney's fees. Plaintiff does not allege any statute or rule under Nevada law
6 necessitating defendant paying attorney's fees in the context of this case. (ECF No. 198). Thus,
7 state law contains no basis for plaintiff's claim for attorney's fees.

8 Accordingly, plaintiff's motion for attorney's fees will be denied—because in addition to
9 being untimely—plaintiff failed to show that it is entitled to attorney's fees under Nevada law.

10 **IV. Conclusion**

11 Accordingly,

12 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff
13 CC.Mexicano.US, LLC's motion for attorney's fees (ECF No. 198), be, and the same hereby is,
14 DENIED.

15 DATED October 17, 2016.

16 
UNITED STATES DISTRICT JUDGE